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CHARLES ELMORE CROPLEY
CLERK

No. 398

IN THE

Supreme Court of the United States

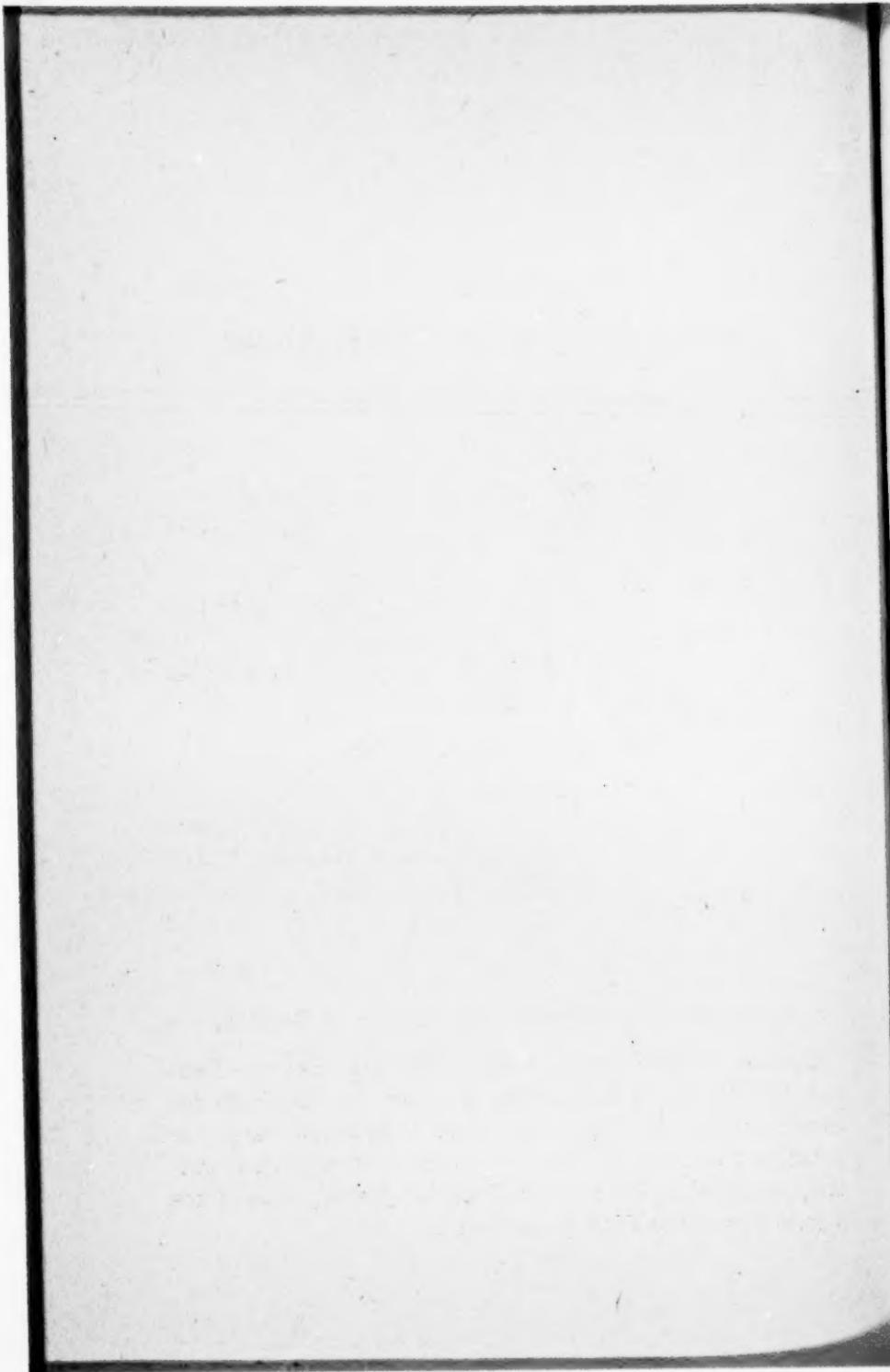
OCTOBER TERM, 1944.

LIEUT. WILLIAM DOWNEY, U. S. A., ET AL.,
Petitioners,
vs.

THE HON. DWIGHT H. GREEN, EX OFFICIO IN THE
CAPACITY HEREINAFTER DESIGNATED,
Respondent.

EMERGENCY MOTIONS.

URBAN A. LAVERY and
FRANCIS HEISLER,
Attorneys for Petitioners,
and Movers hereof.



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CAPACITY HEREINAFTER DESIGNATED,
Respondent.

EMERGENCY MOTIONS.

Come now the Petitioners herein by Urban A. Lavery and Francis Heisler, their attorneys, and respectfully and prayerfully present the following Motions.

I.

Motion as to Emergency Consideration of Petition.

Counsel for Petitioners respectfully ask that the Petition for Certiorari filed herein be taken by this Court for consideration and disposition as an emergency matter, in vacation time; and in support of such motion counsel submit the attached Affidavit of Urban A. Lavery, one of the attorneys for the Petitioners herein.

II.

Motion to Advance Cause.

Comes now the Petitioners herein by Urban A. Lavery and Francis Heisler, their attorneys (but only on the condition that the Petition for Certiorari heretofore filed herein shall have been granted by this Court), and in that event counsel present the following Motion:

The said Petitioners respectfully ask this Court to consider advancing this cause for prompt hearing and disposition as an emergency matter, so that it may be decided in apt time; and in support of that Motion counsel submit the attached Affidavit of Urban A. Lavery, one of the attorneys for the Petitioners herein. *Urban A. Lavery, and
Francis Heisler*

Supporting Affidavit. *Attorneys for Petitioners
Lavery & Heisler.*

Comes now URBAN A. LAVERY, who says upon oath that he is a member of the bar of the State of Illinois and a member of the bar of the Supreme Court of the United States, and is one of the attorneys for the petitioners herein, and that as such attorney, he is duly authorized to make this Affidavit. And thereupon affiant states:

1. This Affidavit is made in support of the foregoing Motion as to Emergency Consideration of the Petition for Certiorari heretofore filed herein; and also in support of the foregoing Motion to Advance This Cause.

2. That this Cause involves a matter of large and urgent public importance in that it concerns (as charged in the Complaint below) the right to vote of at least 300,000 members of the Armed Forces of the United States who are residents of and qualified voters in the State of Illinois, at the Presidential and Congressional elections to be held in the said state on November 7, 1944.

3. That this Cause in this Court particularly involves the construction of:

(a) the Act of Congress passed in March 1944, having to do with voting under the so-called Federal Ballot by the Armed Forces of the United States; and

(b) the interpretation and construction (and application to this suit) of the so-called Federal Declaratory Judgment Act. The particular provision of the so-called Federal Soldier's Voting Act of 1944 which is involved in this case is a provision of that Act giving certain powers and duties under that Act of Congress to the Respondent with respect to the authorizing and validating by him of the use of Federal Ballots in the State of Illinois at the election last mentioned.

4. That (as shown by the verified Complaint of the Plaintiffs below, and by the Motion to Dismiss and by the Briefs filed by the Defendant below) the Respondent admits that he has failed and refused to file the necessary statutory Certificate under the said Federal Soldiers' Voting Act, which Certificate is necessary to be filed under that Act before any soldier or sailor of the State of Illinois can vote the Federal Ballot in that state; the Respondent asserting and contending, as a reason for his refusal to file such Certificate, that the so-called Federal Ballots as authorized by the Federal Soldiers' Voting Act of 1944 are "unconstitutional and invalid" everywhere in the State of Illinois; the Respondent making such contention and refusing to file such Certificate notwithstanding the passage by Congress of the said Soldiers' Voting Act authorizing the use of the said Federal Ballot, and notwithstanding certain provisions of the Federal Constitution which, Petitioners claim, guarantee to them and to all other members of the Armed Forces of the United States the right to use and vote such Federal Ballots.

5. That it is desirable in the public interest to have a prompt and early decision and determination of this Cause

by this Court, in order that the Respondent and the other public officials in the State of Illinois concerned with the conduct of elections (as well as the public generally) may be guided and advised thereby; and also, in order that the 300,000 or more voters from the State of Illinois, now serving in the Armed Forces of the United States outside the United States, who come within the provisions of the said Federal Soldiers' Voting Act, may at the earliest possible date know and understand, and have judicially established for them, their rights and privileges with respect to voting in the State of Illinois under the said Soldiers' Voting Act of 1944 at the November, 1944, elections last mentioned.

6. That, if at all possible, it is desirable in the public interest that the legal controversies and questions above suggested be finally considered and passed upon, and construed and interpreted, by this Honorable Court a substantial time before November 7, 1944; that the Petitioners, and all the numerous other members of the Armed Forces who are similarly situated to them in the State of Illinois, and elsewhere, are particularly desirous (if it is possible) to have such interpretation and construction by this Court; and that a final judicial determination of the legal issues in this case by this Court (if that is at all possible) would be of large public interest in the other states of the Union outside of the State of Illinois.

7. That for the information of this Court on these Motions Petitioners further respectfully show that under the terms of the Federal Soldiers' Voting Act of 1944 it is provided:

(a) that no soldier or sailor any place in the world may vote the so-called Federal Ballot unless at the time he applies for it he signs an affidavit stating that as of September 1, 1944 he has applied for the so-called "State Ballot" (that is the ordinary ballot used in his home precinct) and as of October 1, 1944 he has been unable to get such a State Ballot.

(b) that no soldier or sailor from the State of Illinois can get and use a Federal Ballot or have it delivered to him by the War Department or Navy Department unless and until the Respondent shall have filed in Washington, D. C. the "Certificate" above mentioned.

And that by reason of the matters stated in paragraphs (a) and (b) above, and the refusal of the Respondent to act as above recited, more than 300,000 soldiers and sailors from the State of Illinois, now in the Armed Forces of the United States, who are qualified electors at the said election, will be entirely deprived of the privilege of using and voting the said Federal Ballot provided for under the said Federal Soldiers' Voting Act of 1944, at the elections last mentioned.

8. Affiant respectfully suggests that if this honorable Court should grant this Petition for Certiorari, and thereafter advance this cause for emergency hearing and disposition, there would be apt time for a decision and opinion of this Court to become effective in the premises. And in that behalf Affiant, on information and belief, respectfully informs the Court that:

A. The so-called Federal Ballots provided for in the Federal Wartime Voting Act of 1944 have already been prepared and printed by the War Department and the Navy Department, in sufficient quantities and moreover have been forwarded and transported in bulk to the Army and Navy Posts and Commands and Stations and Ships throughout the world; and even now are ready (in most places) for distribution to the Armed Forces; and the said Ballots will be, and are, available for the use of the over-seas Forces, from Illinois and all other States, at all such places, from this time down until the Election of November 7, 1944.

B. That after the said Ballots have been voted by the individual members of the Armed Forces, the voted Ballots will be promptly picked up and transported

by the War Department or the Navy Department, as the case may be, by preferred transportation back to the Secretaries of States of the various States, for distribution to the proper local election officials in those States; and that such transportation of the said Federal Ballots will therefore be much quicker and prompter and more efficient than *the individual mail delivery* required for voting under the so-called "State-Ballot" Method.

C. That a *favorable* decision by this honorable Court (if that should occur) as to the validity and constitutionality of the so-called Federal Ballot, rendered, say by the middle of the month of October, 1944, would at once result in the release and distribution of more than 250,000 Federal Ballots to all Service men and women from the State of Illinois in all parts of the world; (and would do likewise for an even larger number of Service men in other States where such Federal Ballots are held back for the same reason as in Illinois); and would permit all such persons to vote and return their Federal Ballots in apt time so that they could be counted and tallied in the Presidential and Congressional elections of November 7, 1944.

All of which is respectfully submitted in support of the foregoing motions.

URBAN A. LAVERY,

*One of the Attorneys for Petitioners
Herein.*

STATE OF ILLINOIS, }ss.
COUNTY OF COOK. }

URBAN A. LAVERY, being first duly sworn, says that he has read the foregoing Affidavit by him subscribed and that the same is true to the best of his knowledge and belief.

URBAN A. LAVERY.

Subscribed and sworn to before me a Notary Public in and for the County of Cook and State of Illinois this 24th day of August, 1944.

DAOLA SMITH,
Notary Public.

(SEAL)